

1 S. BRENT VOGEL, ESQ.
Nevada Bar No. 006858

2 **LEWIS BRISBOIS BISGAARD**
3 **& SMITH LLP**

400 South Fourth Street

Suite 500

Las Vegas, Nevada 89101

(702) 893-3383

FAX: (702) 366-9563

bvogel@lbbslaw.com

7 Attorneys for Defendants
Actavis Totowa, LLC; Actavis, Inc.,
8 Mylan Pharmaceuticals, Inc. and UDL
Laboratories, Inc.

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 ORATHAI GLASSER, individually and as Special
12 Administrator of the Estate of Scott Glaser,

13 Plaintiff,

14 v.

15 ACTAVIS TOTOWA, LLC, a foreign corporation;
16 ACTAVIS, INC., a foreign corporation; MYLAN
17 PHARMACEUTICALS, INC., a foreign
18 corporation; UDL LABORATORIES, INC., a
19 foreign corporation; WALGREEN CO., a foreign
20 corporation; WAL-MART STORES, INC., a
foreign corporation; DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL OF
DEFENDANTS ACTAVIS TOTOWA
LLC, ACTAVIS INC., MYLAN
PHARMACEUTICALS INC. AND UDL
LABORATORIES, INC.**

21 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants
22 Actavis Totowa LLC ("Actavis Totowa"), Actavis Inc., Mylan Pharmaceuticals Inc. ("Mylan
23 Pharmaceuticals") and UDL Laboratories, Inc. ("UDL Laboratories") ("Defendants"), through
24 undersigned counsel, hereby remove the above-captioned action from the Eighth Judicial District Court
25 of Clark County, Nevada to the United States District Court for the District of Nevada. Removal is
26 warranted under 28 U.S.C. § 1441(b) because this is a diversity action over which this Court has
27 original jurisdiction under 28 U.S.C. § 1332.

28 1. On April 22, 2010, Plaintiff Orathai Glasser, individually and as Special Administrator

1 of the Estate of Scott Glasser, filed an action entitled *Glasser v. Actavis Totowa, LLC, et al.*, in the
2 Eighth Judicial District Court of Clark County, Nevada, Case No. A-10-614961-C. On April 28, 2010,
3 Plaintiff Orathai Glasser subsequently filed a First Amended Complaint. A true and correct copy of the
4 First Amended Complaint ("Complaint") in this action is attached to the Declaration of S. Brent Vogel
5 ("Vogel Declaration") as **Exhibit A**.

6 2. No proceedings have gone forward in the State Court action.

7 3. As more fully set forth below, this case is properly removed to this Court pursuant to
8 28 U.S.C. § 1441 because Defendants have satisfied the procedural requirements for removal and this
9 Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332. Specifically, there is
10 diversity of citizenship between Plaintiff and Defendants, and the amount in controversy is met.

11 4. This case involves allegations of personal injury from the use of the pharmaceutical
12 medicine Digitek®. On August 13, 2008, the Judicial Panel for Multidistrict Litigation ("JPML")
13 issued an order under 28 U.S.C. § 1407 establishing an MDL proceeding in the Southern District of
14 West Virginia (MDL-1968) (Judge Goodwin) for Digitek®-related actions. Several hundred Digitek®
15 cases are venued there.

16 5. As required under the JPML Rules of Procedure, Defendants intend to seek transfer of
17 this action to MDL No. 1968, and will shortly provide the MDL Panel with notice of this action under
18 the "tag-along" procedure in the JPML Rules. *See* Rules of Procedure of the Judicial Panel on
19 Multidistrict Litigation, 199 F.R.D. 425 (JPML 2001), Rule 7.2(i). Defendants expect that the JPML
20 will transfer this action to the Digitek® MDL within a matter of weeks after notice of tag-along.

21 **I. DEFENDANTS HAVE SATISFIED THE PROCEDURAL REQUIREMENTS FOR**
22 **REMOVAL.**

23 6. To Defendants' knowledge, no Defendant has yet been served with a copy of Plaintiff's
24 Complaint. Accordingly, this Notice of Removal was filed within 30 days of service of the Complaint
25 and is therefore timely under 28 U.S.C. § 1446(b). *See Salveson v. W. States Bankcard Ass'n*, 731 F.2d
26 1423, 1429 (9th Cir. 1984) ("a party not served need not join" in the removal petition).

27 7. The Eighth Judicial District Court of Clark County, Nevada is located within the United
28 States District Court for the District of Nevada. Thus, venue is proper in this Court under 28 U.S.C.

1 § 108 because it is the "district and division embracing the place where such action is pending." *See*
2 28 U.S.C. § 1441(a).

3 8. No previous request has been made for the relief requested herein.

4 9. Under 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders received by
5 Defendants, which papers include the Complaint, are attached to the Declaration of S. Brent Vogel as
6 **Exhibit A.**

7 10. Under 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on counsel
8 for Plaintiff and a copy is being filed with the Clerk of the Eighth Judicial District Court of Clark
9 County, Nevada.

10 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER**
11 **JURISDICTION UNDER 28 U.S.C. §§ 1332 AND 1441.**

12 11. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because this is a civil
13 action in which the amount in controversy for Plaintiff exceeds the sum of \$75,000, exclusive of costs
14 and interest, and is between citizens of different states.

15 **A. The Amount In Controversy Requirement Is Satisfied.**

16 12. It is apparent on the face of the Complaint that Plaintiff seeks an amount in controversy
17 in excess of \$75,000, exclusive of costs and interest. Plaintiff's Complaint alleges that Scott Glasser
18 ("Decedent") sustained serious injuries that caused extensive pain, suffering and emotional distress and
19 ultimately death due to his use of the drug Digitek®, and that these injuries were proximately caused
20 by Defendants. *See* Complaint 24, Exh. "A." Plaintiff asserts that Deceden's use of Digitek®
21 "substantially reduced Decedent's ability to enjoy life" and caused him to expend "substantial sums of
22 money for medical, hospital and related care." *Id.* Plaintiff further alleges that she personally suffered
23 damages including emotional distress and loss of consortium, companionship and society. *Id.* at 25.
24 In addition to seeking general and special damages, Plaintiff also seeks punitive and exemplary
25 damages for Defendants' alleged "despicable conduct". *Id.* at 34, Prayer for Relief. Therefore,
26 analyzing the Complaint in a light most favorable to Plaintiff, while not admitting liability for any
27 amount, defense counsel represents to this Court that the amount of damages alleged to be in
28 controversy by Plaintiff in this case more likely than not exceeds \$75,000.00, exclusive of interest and

costs. *See Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1107-08 (9th Cir. Mar. 31, 2010) ("even though the state court complaint does not specify an amount" it satisfied amount in controversy requirement by requesting damages for, among other things, wrongful death, loss of consortium, negligence and funeral, medical and burial expenses); *Corbelle v. Sanyo Elec. Trading Co., Ltd.*, 2003 WL 22682464 at *3 (N.D. Cal. Nov. 4, 2003) (noting that complaint which "alleges wrongful death or permanent disability or other such facts . . . would clearly establish an amount in controversy in excess of \$75,000"); *Campbell v. Bridgestone/Firestone, Inc.*, 2006 WL 707291 at *2 (E.D. Cal. Mar. 17, 2006) (apparent from complaint that amount in controversy met where plaintiffs asserted strict products liability, negligence, and breach of warranty claims against multiple defendants and complaint sought compensatory damages for wage loss, hospital and medical expenses, general damage, and loss of earning capacity); *In re Rezulin Prods. Liab. Litig.*, 133 F.Supp.2d 272, 296 (S.D.N.Y. 2001) (holding that a "complaint obviously asserts a claim exceeding \$75,000" where plaintiffs alleged serious medical complications from ingestion of prescription drug).

B. There Is Complete Diversity Between The Defendants And Plaintiff.

13. Defendant Actavis Totowa is, and was at the time the Complaint was filed and the case removed to this Court, a Delaware limited liability corporation with its principal place of business in New Jersey. Actavis Totowa's single member is Actavis Inc., a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New Jersey. Accordingly, Actavis Totowa is a citizen of the State of Delaware and the State of New Jersey for the purposes of determining this Court's subject matter jurisdiction. *See* 28 U.S.C. § 1332(c).

14. Defendant Actavis Inc. is, and was at the time the Complaint was filed and the case removed to this Court, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New Jersey. Accordingly, Actavis Inc. is a citizen of the States of Delaware and New Jersey for the purposes of determining this Court's subject matter jurisdiction. *See* 28 U.S.C. § 1332(c).

15. Defendant Mylan Pharmaceuticals Inc. is, and was at the time the Complaint was filed and the case removed to this Court, a corporation organized and existing under the laws of the State of West Virginia with its principal place of business in West Virginia. Accordingly, Mylan

1 Pharmaceuticals is a citizen of the State of West Virginia for the purposes of determining this Court's
2 subject matter jurisdiction. *See* 28 U.S.C. § 1332(c).

3 16. Defendant UDL Laboratories, Inc. is, and was at the time the Complaint was filed and
4 the case removed to this Court, a corporation organized and existing under the laws of the State of
5 Illinois with its principal place of business in Illinois. Accordingly, UDL Laboratories is a citizen of
6 the State of Illinois for the purposes of determining this Court's subject matter jurisdiction. *See* 28
7 U.S.C. § 1332(c).

8 17. Based on publicly available information, Defendant Walgreen Co. is, and was at the time
9 the Complaint was filed and the case removed to this Court, a corporation organized and existing under
10 the laws of the State of Illinois with its principal places of business in Illinois. *See* 28 U.S.C. § 1332(c);
11 Nevada Secretary of State Filing by Walgreen Co. (attached as **Exhibit B** to Vogel Declaration).

12 18. Based on publicly available information, Defendant Wal-Mart Stores, Inc. is, and was
13 at the time the Complaint was filed and the case removed to this Court, a publicly traded corporation
14 organized and existing under the laws of the State of Delaware with its principal place of business in
15 Arkansas. Accordingly, Wal-Mart Stores, Inc. is a citizen of the States of Delaware and Arkansas for
16 the purposes of determining this Court's subject matter jurisdiction. *See* 28 U.S.C. § 1332(c); Nevada
17 Secretary of State filing by Wal-Mart Stores, Inc. (attached as **Exhibit C** to Vogel Declaration).

18 19. Plaintiff Orathai Glasser alleges that she is a resident of the State of Nevada. *See*
19 Complaint 1, Exh. A. Plaintiff does not allege any alternative state of residency. Accordingly, upon
20 information and belief, Plaintiff is a citizen of the State of Nevada for purposes of determining
21 diversity. Based on this citizenship, there is complete diversity of citizenship between Plaintiffs and
22 named Defendants.

23 20. The Complaint includes a number of fictitious defendants, whose citizenships are
24 ignored for removal purposes. 28 U.S.C. § 1441(a).

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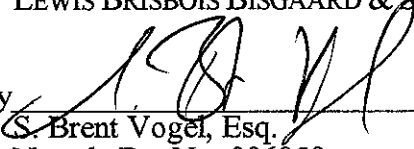
28 ...

1 WHEREFORE, Defendants Actavis Totowa LLC, Actavis Inc., Mylan Pharmaceuticals Inc. and
2 UDL Laboratories, Inc. respectfully request removal of this action from the Eighth Judicial District
3 Court of Clark County, Nevada, bearing Case Number A-10-614961-C to this Court pursuant to 28
4 U.S.C. § 1441.

5 Dated this 5 day of May, 2010.

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8 By


S. Brent Vogel, Esq.

Nevada Bar No. 006858

400 S. Fourth Street, Ste. 500

Las Vegas, Nevada 89101

Attorneys for Defendants

Actavis Totowa, LLC; Actavis, Inc.,

9 Mylan Pharmaceuticals, Inc. and UDL
10 Laboratories, Inc.
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith, LLP and that on this 4th day of May, 2010, I did cause a true copy of **NOTICE OF REMOVAL OF DEFENDANTS ACTAVIS TOTOWA LLC, ACTAVIS INC., MYLAN PHARMACEUTICALS INC. AND UDL LABORATORIES, INC.** to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Jennifer C. Dorsey, Esq.
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorney for Plaintiff

By 
An Employee of Lewis Brisbois Bisgaard & Smith, LLP